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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PARTY ANIMAL, INC.

Plaintiffs,
v.

EVANGER'S DOG AND CAT FOOD
CO. INC., an Illinois corporation;
NUTRIPACK, LLC, an Illinois limited
liability company; and DOES a through
j100, inclusive,

Defendants.

EVANGER'S DOG AND CAT FOOD
CO. INC., an Illinois corporation

Counter-Claimant,
v.

PARTY ANIMAL, INC.

Counter-Defendant.

Case No. 2:17-cv-03422-PSG-FFM

**PROTECTIVE ORDER
PURSUANT TO STIPULATION**

A. PURPOSES AND LIMITATIONS

As the Parties have represented that discovery in this action is likely to
involve production of confidential, proprietary, or private information for which
special protection from public disclosure and from use for any purpose other than

1 prosecuting this litigation may be warranted, this Court enters the following
2 Protective Order. This Order does not confer blanket protections on all disclosures
3 or responses to discovery. The protection it affords from public disclosure and use
4 extends only to the limited information or items that are entitled to confidential
5 treatment under the applicable legal principles. Further, as set forth in Section 12.3,
6 below, this Protective Order does not entitle the parties to file confidential
7 information under seal. Rather, when the Parties seek permission from the court to
8 file material under seal, the Parties must comply with Civil Local Rule 79-5 and
9 with any pertinent orders of the assigned District Judge and Magistrate Judge.

10 **B. GOOD CAUSE STATEMENT**

11 In light of the nature of the claims and allegations in this case and the Parties'
12 representations that discovery in this case will involve the production of confidential
13 records, and in order to expedite the flow of information, to facilitate the prompt
14 resolution of disputes over confidentiality of discovery materials, to adequately
15 protect information the Parties are entitled to keep confidential, to ensure that the
16 Parties are permitted reasonable necessary uses of such material in connection with
17 this action, to address their handling of such material at the end of the litigation, and
18 to serve the ends of justice, a protective order for such information is justified in this
19 matter. The Parties shall not designate any information/documents as confidential
20 without a good faith belief that such information/documents have been maintained
21 in a confidential, non-public manner, and that there is good cause or a compelling
22 reason why it should not be part of the public record of this case.

23 **1. DEFINITIONS**

24 **2.1 Action:** The instant action (Case No. 2:17-cv-03422-PSG-FFM).

25 **2.2 Challenging Party:** a Party or Non-Party that challenges the
26 designation of information or items under this Order.

27 **2.3 "CONFIDENTIAL" Information or Items:** information (regardless of
28 how it is generated, stored or maintained) or tangible things that qualify for

1 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
2 the Good Cause Statement.

3 2.4 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

4 Information or Items: extremely sensitive “CONFIDENTIAL” Information or
5 Items, the disclosure of which to another Party or Non-Party would create a
6 substantial risk of serious harm that could not be avoided by less restrictive means.

7 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as
8 their support staff).

9 2.6 Designating Party: a Party or Non-Party that designates information or
10 items that it produces in disclosures or in responses to discovery as
11 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
12 ONLY.”

13 2.7 Disclosure or Discovery Material: all items or information, regardless
14 of the medium or manner in which it is generated, stored, or maintained (including,
15 among other things, testimony, transcripts, and tangible things), that are produced or
16 generated in disclosures or responses to discovery in this matter.

17 2.8 Expert: a person with specialized knowledge or experience in a matter
18 pertinent to the litigation who has been retained by a Party or its counsel to serve as
19 an expert witness or as a consultant in this Action.

20 2.9 House Counsel: attorneys who are employees of a Party to this Action.
21 House Counsel does not include Outside Counsel of Record or any other outside
22 counsel.

23 2.10 Non-Party: any natural person, partnership, corporation, association, or
24 other legal entity not named as a Party to this action.

25 2.11 Outside Counsel of Record: attorneys who are not employees of a
26 Party to this Action but are retained to represent or advise a Party to this Action and
27 have appeared in this Action on behalf of that Party or are affiliated with a law firm
28 which has appeared on behalf of that Party, and includes support staff.

1 2.12 Party: any Party to this Action, including all of its officers, directors,
2 employees, consultants, retained experts, and Outside Counsel of Record (and their
3 support staffs).

4 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
5 Discovery Material in this Action.

6 2.14 Professional Vendors: persons or entities that provide litigation
7 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
8 demonstrations, and organizing, storing, or retrieving data in any form or medium)
9 and their employees and subcontractors.

10 2.15 Protected Material: any Disclosure or Discovery Material that is
11 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
12 ATTORNEYS' EYES ONLY."

13 2.16 Receiving Party: a Party that receives Disclosure or Discovery
14 Material from a Producing Party.

15 3. SCOPE

16 The protections conferred by this Order cover not only Protected Material (as
17 defined above), but also (1) any information copied or extracted from Protected
18 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;
19 and (3) any deposition testimony, conversations, or presentations by Parties or their
20 Counsel that might reveal Protected Material, other than during a court hearing or at
21 trial.

22 Any use of Protected Material during a court hearing or at trial shall be
23 governed by the orders of the presiding judge. This Order does not govern the use of
24 Protected Material during a court hearing or at trial.

25 4. DURATION

26 Even after final disposition of this litigation, the confidentiality obligations
27 imposed by this Order shall remain in effect until a Designating Party agrees
28 otherwise in writing or a court order otherwise directs. Final disposition shall be

1 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
2 or without prejudice; and (2) final judgment herein after the completion and
3 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
4 including the time limits for filing any motions or applications for extension of time
5 pursuant to applicable law.

6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for Protection.

8 Each Party or Non-Party that designates information or items for protection
9 under this Order must take care to limit any such designation to specific material
10 that qualifies under the appropriate standards. The Designating Party must designate
11 for protection only those parts of material, documents, items, or oral or written
12 communications that qualify so that other portions of the material, documents,
13 items, or communications for which protection is not warranted are not swept
14 unjustifiably within the ambit of this Order.

15 Mass, indiscriminate, or routinized designations are prohibited. Designations
16 that are shown to be clearly unjustified or that have been made for an improper
17 purpose (e.g., to unnecessarily encumber the case development process or to impose
18 unnecessary expenses and burdens on other parties) may expose the Designating
19 Party to sanctions.

20 If it comes to a Designating Party's attention that information or items that it
21 designated for protection do not qualify for protection, that Designating Party must
22 promptly notify all other Parties that it is withdrawing the inapplicable designation.

23 5.2 Manner and Timing of Designations. Except as otherwise provided in
24 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise
25 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
26 under this Order must be clearly so designated before the material is disclosed or
27 produced.

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1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic
3 documents, but excluding transcripts of depositions), that the Producing Party affix
4 at a minimum, the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
5 ATTORNEYS' EYES ONLY" to each page that contains protected material. If
6 only a portion or portions of the material on a page qualifies for protection, the
7 Producing Party also must clearly identify the protected portion(s) (e.g., by making
8 appropriate markings in the margins).

9 (b) for testimony given in depositions that the Designating Party identifies
10 on the record, before the close of the deposition as protected testimony.

11 (c) for information produced in some form other than documentary and
12 for any other tangible items, that the Producing Party affix in a prominent place on
13 the exterior of the container or containers in which the information is stored the
14 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
15 EYES ONLY." If only a portion or portions of the information warrants protection,
16 the Producing Party, to the extent practicable, shall identify the protected portion(s).

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
18 failure to designate qualified information or items does not, standing alone, waive
19 the Designating Party's right to secure protection under this Order for such material.
20 Upon timely correction of a designation, the Receiving Party must make reasonable
21 efforts to assure that the material is treated in accordance with the provisions of this
22 Order.

23 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

24 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
25 designation of confidentiality at any time that is consistent with the Court's
26 Scheduling Order.

27 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
28 resolution process under Local Rule 37-1 et seq.

1 6.3 The burden of persuasion in any such challenge proceeding shall be on
2 the Designating Party. Frivolous challenges, and those made for an improper
3 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
4 parties) may expose the Challenging Party to sanctions. Unless the Designating
5 Party has waived or withdrawn the confidentiality designation, the Parties shall
6 continue to afford the material in question the level of protection to which it is
7 entitled under the Producing Party's designation until the Court rules on the
8 challenge.

9 7. ACCESS TO AND USE OF PROTECTED MATERIAL

10 7.1 Basic Principles. A Receiving Party may use Protected Material that is
11 disclosed or produced by another Party or by a Non-Party in connection with this
12 Action only for prosecuting, defending, or attempting to settle this Action. Such
13 Protected Material may be disclosed only to the categories of persons and under the
14 conditions described in this Order. When the Action has been terminated, a
15 Receiving Party must comply with the provisions of Section 13 below.

16 Protected Material must be stored and maintained by a Receiving Party at a
17 location and in a secure manner that ensures that access is limited to the persons
18 authorized under this Order.

19 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
20 otherwise ordered by the court or permitted in writing by the Designating Party, a
21 Receiving Party may disclose any information or item designated
22 "CONFIDENTIAL" only to:

23 (a) the Receiving Party's Outside Counsel of Record in this Action, as
24 well as employees of said Outside Counsel of Record to whom it is reasonably
25 necessary to disclose the information for this Action;

26 (b) the officers, directors, and employees (including House Counsel) of
27 the Receiving Party to whom disclosure is reasonably necessary for this Action;

28 (c) Experts (as defined in this Order) of the Receiving Party to whom

1 disclosure is reasonably necessary for this Action and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (d) the court and its personnel;

4 (e) private court reporters and their staff to whom disclosure is reasonably
5 necessary for this Action and who have signed the “Acknowledgment and
6 Agreement to Be Bound” (Exhibit A);

7 (f) professional jury or trial consultants, mock jurors, and Professional
8 Vendors to whom disclosure is reasonably necessary for this Action and who have
9 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (g) the author or recipient of a document containing the information or a
11 custodian or other person who otherwise possessed or knew the information;

12 (h) during their depositions, witnesses, and attorneys for witnesses, in the
13 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
14 requests that the witness sign the “Acknowledgment and Agreement to Be Bound”
15 (Exhibit A); and (2) they will not be permitted to keep any confidential information
16 unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
17 unless otherwise agreed by the Designating Party or ordered by the court. Pages of
18 transcribed deposition testimony or exhibits to depositions that reveal Protected
19 Material may be separately bound by the court reporter and may not be disclosed to
20 anyone except as permitted under this Protective Order; and

21 (i) any mediator or settlement officer, and their supporting personnel,
22 mutually agreed upon by any of the parties engaged in settlement discussions.

23 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
24 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
25 writing by the Designating Party, a Receiving Party may disclose any information or
26 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only
27 to:

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1 (a) the Receiving Party's Outside Counsel of Record in this Action, as well
2 as employees of said Outside Counsel of Record to whom it is reasonably necessary
3 to disclose the information for this Action;

4 (b) Experts (as defined in this Order) of the Receiving Party to whom
5 disclosure is reasonably necessary for this Action and who have signed the
6 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

7 (c) the court and its personnel;

8 (d) private court reporters and their staff to whom disclosure is reasonably
9 necessary for this Action and who have signed the "Acknowledgment and
10 Agreement to Be Bound" (Exhibit A);

11 (e) professional jury or trial consultants, mock jurors, and Professional
12 Vendors to whom disclosure is reasonably necessary for this Action and who have
13 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

14 (f) the author or recipient of a document containing the information or a
15 custodian or other person who otherwise possessed or knew the information; and

16 (g) any mediator or settlement officer, and their supporting personnel,
17 mutually agreed upon by any of the parties engaged in settlement discussions.

18 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
19 PRODUCED IN OTHER LITIGATION

20 If a Party is served with a subpoena or a court order issued in other litigation
21 that compels disclosure of any information or items designated in this Action as
22 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
23 ONLY," that Party must:

24 (a) promptly notify in writing the Designating Party. Such notification
25 shall include a copy of the subpoena or court order unless prohibited by law;

26 (b) promptly notify in writing the party who caused the subpoena or order
27 to issue in the other litigation that some or all of the material covered by the

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1 subpoena or order is subject to this Protective Order. Such notification shall include
2 a copy of this Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be
4 pursued by the Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party served with
6 the subpoena or court order shall not produce any information designated in this
7 action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
8 EYES ONLY" before a determination by the court from which the subpoena or
9 order issued, unless the Party has obtained the Designating Party's permission, or
10 unless otherwise required by the law or court order. The Designating Party shall
11 bear the burden and expense of seeking protection in that court of its confidential
12 material and nothing in these provisions should be construed as authorizing or
13 encouraging a Receiving Party in this Action to disobey a lawful directive from
14 another court.

15 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
16 PRODUCED IN THIS LITIGATION

17 (a) The terms of this Order are applicable to information produced by a
18 Non-Party in this Action and designated as "CONFIDENTIAL" or "HIGHLY
19 CONFIDENTIAL – ATTORNEYS' EYES ONLY." Such information produced by
20 Non-Parties in connection with this litigation is protected by the remedies and relief
21 provided by this Order. Nothing in these provisions should be construed as
22 prohibiting a Non-Party from seeking additional protections.

23 (b) In the event that a Party is required, by a valid discovery request, to
24 produce a Non-Party's confidential information in its possession, and the Party is
25 subject to an agreement with the Non-Party not to produce the Non-Party's
26 confidential information, then the Party shall:

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1 (1) promptly notify in writing the Requesting Party and the Non-Party
2 that some or all of the information requested is subject to a confidentiality
3 agreement with a Non-Party;

4 (2) promptly provide the Non-Party with a copy of the Protective
5 Order in this Action, the relevant discovery request(s), and a reasonably specific
6 description of the information requested; and

7 (3) make the information requested available for inspection by the
8 Non-Party, if requested.

9 (c) If a Non-Party represented by counsel fails to commence the process
10 called for by Local Rules 45-1 and 37-1, et seq. within 14 days of receiving the
11 notice and accompanying information or fails contemporaneously to notify the
12 Receiving Party that it has done so, the Receiving Party may produce the Non-
13 Party's confidential information responsive to the discovery request. If an
14 unrepresented Non-Party fails to seek a protective order from this court within 14
15 days of receiving the notice and accompanying information, the Receiving Party
16 may produce the Non-Party's confidential information responsive to the discovery
17 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
18 not produce any information in its possession or control that is subject to the
19 confidentiality agreement with the Non-Party before a determination by the court
20 unless otherwise required by the law or court order. Absent a court order to the
21 contrary, the Non-Party shall bear the burden and expense of seeking protection in
22 this court of its Protected Material.

23 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
25 Protected Material to any person or in any circumstance not authorized under this
26 Protective Order, the Receiving Party must immediately (a) notify in writing the
27 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
28 all unauthorized copies of the Protected Material, (c) inform the person or persons to

1 whom unauthorized disclosures were made of all the terms of this Order, and
2 (d) request such person or persons to execute the “Acknowledgment and Agreement
3 to Be Bound” (Exhibit A).

4 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
5 OTHERWISE PROTECTED MATERIAL

6 When a Producing Party gives notice to Receiving Parties that certain
7 inadvertently produced material is subject to a claim of privilege or other protection,
8 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
9 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
10 procedure may be established in an e-discovery order that provides for production
11 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and
12 (e), insofar as the parties reach an agreement on the effect of disclosure of a
13 communication or information covered by the attorney-client privilege or work
14 product protection, the parties may incorporate their agreement into this Protective
15 Order.

16 12. MISCELLANEOUS

17 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
18 person to seek its modification by the Court in the future.

19 12.2 Right to Assert Other Objections. No Party waives any right it
20 otherwise would have to object to disclosing or producing any information or item
21 on any ground not addressed in this Protective Order. Similarly, no Party waives
22 any right to object on any ground to use in evidence of any of the material covered
23 by this Protective Order.

24 12.3 Filing Protected Material. A Party that seeks to file under seal any
25 Protected Material must comply with Civil Local Rule 79-5 and with any pertinent
26 orders of the assigned District Judge and Magistrate Judge. Protected Material may
27 only be filed under seal pursuant to a court order authorizing the sealing of the
28 specific Protected Material at issue. If a Party’s request to file Protected Material


1 under seal is denied by the court, then the Receiving Party may file the information
2 in the public record unless otherwise instructed by the court.

3 13. FINAL DISPOSITION

4 After the final disposition of this Action, as defined in Section 4, within 60
5 days of a written request by the Designating Party, each Receiving Party must return
6 all Protected Material to the Producing Party or destroy such material. As used in
7 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
8 summaries, and any other format reproducing or capturing any of the Protected
9 Material. Whether the Protected Material is returned or destroyed, and upon request
10 by the Disclosing Party, the Receiving Party must submit a written certification to
11 the Producing Party (and, if not the same person or entity, to the Designating Party)
12 by the 60 day deadline that (1) identifies (by category, where appropriate) all the
13 Protected Material that was returned or destroyed and (2) affirms that the Receiving
14 Party has not retained any copies, abstracts, compilations, summaries or any other
15 format reproducing or capturing any of the Protected Material. Notwithstanding this
16 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
17 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
18 deposition and trial exhibits, expert reports, attorney work product, and consultant
19 and expert work product, even if such materials contain Protected Material. Any
20 such archival copies that contain or constitute Protected Material remain subject to
21 this Protective Order as set forth in Section 4.

22 14. Any violation of this Order may be punished by any and all appropriate
23 measures including, without limitation, contempt proceedings and/or monetary
24 sanctions.

25
26 DATED: September 4, 2019



/S/ FREDERICK F. MUMM
FREDERICK F. MUMM
United States Magistrate Judge